

**Introduced by Senator Speier**

February 22, 2005

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An act to add Section 2982.10 to the Civil Code, to amend Section 11713.1 of, to add Sections 4456.3 and 11713.16 to, and to add Chapter 11 (commencing with Section 12200) to Division 5 of, to the Vehicle Code, relating to vehicles, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 637, as introduced, Speier. Motor vehicle sales.

(1) Existing law governs motor vehicle conditional sale contracts, as defined. A willful violation of these provisions is a misdemeanor.

This bill would prohibit a seller, in consideration of an assignment of a conditional sale contract, from receiving or accepting from the assignee any payment or credit based upon any amount collected or received under the contract, or to be collected or received, in excess of specified amounts. Because a violation of these provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

(2) Under existing law, when selling a vehicle, a licensed dealer or lessor-retailer is required to use numbered report-of-sale forms issued by the Department of Motor Vehicles.

This bill would require the department to charge a 50¢ fee for each vehicle sold by a dealer or lessor-retailer and reported on a report-of-sale form. All fees collected would be deposited in the Car Buyer's Restitution Fund, which the bill would create. Money in the fund would be continuously appropriated, without regard to fiscal years, to the department to compensate or reimburse consumers, as defined, who may file an application with the department for the payment of a consumer's eligible claim, as defined, if a dealer or

lessor-retailer against whom the claim is asserted has ceased selling and leasing motor vehicles to the general public or has become subject to a petition in bankruptcy.

The bill would provide a procedure for these claims, and would require, in certain cases, the consumer's verified statement to be made under penalty of perjury, thereby expanding the scope of an existing crime and imposing a state-mandated local program. The bill would also authorize the department to adopt regulations for purposes of these provisions.

(3) Existing law makes it a violation of the Vehicle Code, punishable as a misdemeanor, for the holder of a dealer's license to do, or fail to do, specified actions with regard to the advertising and sale of motor vehicles.

This bill would expand those provisions to prohibit a dealer from advertising or selling a vehicle as "certified," or using similar descriptive terms to imply that the vehicle meets the terms of a used vehicle certification program unless that vehicle meets specified criteria. Because the violation of these provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

This bill would also prohibit adding charges to a sale or lease contract without the buyer's consent and would prohibit inflating a payment or extending the maturity of contract for the purpose of disguising the actual charges for goods or services, as defined. Because the violation of these provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2982.10 is added to the Civil Code, to  
2 read:

1 2982.10. (a) In consideration of the assignment of a  
2 conditional sale contract, the seller shall not receive or accept  
3 from the assignee any payment or credit based upon any amount  
4 collected or received, or to be collected or received, under the  
5 contract as a finance charge except to the extent the payment or  
6 credit does not exceed the amount that would be calculated in  
7 accordance with Regulation Z, whether or not Regulation Z  
8 applies to the contract, as the contract's finance charge using, for  
9 the purposes of the calculation, an annual percentage rate equal  
10 to 2.5 percent for a contract having an original scheduled term of  
11 60 monthly payments or less or 2 percent for a contract having an  
12 original scheduled term of more than 60 monthly payments.

13 (b) This section does not apply in the following circumstances:

14 (1) Assignment to affiliates of the seller.

15 (2) Assignment with full recourse or under other terms  
16 requiring the seller to bear the entire risk of financial  
17 performance of the buyer.

18 (3) Assignment more than six months following the date of the  
19 conditional sale contract.

20 (4) Isolated instances resulting from bona fide errors that  
21 would otherwise constitute a violation of subdivision (a) if the  
22 seller maintains reasonable procedures to guard against any  
23 errors and promptly, upon notice of the error, remits to the  
24 assignee any consideration received in excess of that permitted  
25 by subdivision (a).

26 (c) For purposes of subdivision (b), "affiliate" means a person  
27 that controls, is controlled by, or is under common control with  
28 the seller. Affiliate does not include an assignee that is owned or  
29 controlled by an auto manufacturer or distributor.

30 SEC. 2. Section 4456.3 is added to the Vehicle Code, to read:

31 4456.3. (a) The department shall charge a fee for each  
32 vehicle sold by a dealer or lessor-retailer and reported on a  
33 report-of-sale form issued by the department to a dealer or  
34 lessor-retailer, or for every vehicle sold by a dealer or  
35 lessor-retailer where the report of the sale is transmitted  
36 electronically or otherwise. The fees shall be deposited in the Car  
37 Buyer's Restitution Fund established pursuant to Section 12201.

38 (b) The fee required under subdivision (a) shall be fifty cents  
39 (\$0.50), for each vehicle sold and shall be collected until the  
40 amount in the fund is two million five hundred thousand dollars

1 (\$2,500,000). Thereafter, the department shall collect the fee, as  
2 necessary, to maintain the fund at that amount.

3 (c) Payment of the fee required under subdivision (a) is the  
4 obligation of the dealer or lessor-retailer. A dealer or  
5 lessor-retailer shall not separately charge a purchaser or lessee  
6 for the fee.

7 SEC. 3. Section 11713.1 of the Vehicle Code is amended to  
8 read:

9 11713.1. It is a violation of this code for the holder of any  
10 dealer's license issued under this article to do any of the  
11 following:

12 (a) Advertise any specific vehicle for sale without identifying  
13 the vehicle by its model, model-year, and either its license  
14 number or that portion of the vehicle identification number that  
15 distinguishes the vehicle from all other vehicles of the same  
16 make, model, and model-year. Model-year is not required to be  
17 advertised for current model-year vehicles. Year models are no  
18 longer current when ensuing year models are available for  
19 purchase at retail in California. Any advertisement that offers for  
20 sale a class of new vehicles in a dealer's inventory, consisting of  
21 five or more vehicles, that are all of the same make, model, and  
22 model-year is not required to include in the advertisement the  
23 vehicle identification numbers or license numbers of those  
24 vehicles.

25 (b) Advertise the total price of a vehicle without including all  
26 costs to the purchaser at time of sale, except taxes, vehicle  
27 registration fees, the California tire fee, as defined in Section  
28 42885 of the Public Resources Code, emission testing fees not  
29 exceeding fifty dollars (\$50), actual fees charged for certificates  
30 pursuant to Section 44060 of the Health and Safety Code, finance  
31 charges, and any dealer document preparation charge. The dealer  
32 document preparation charge shall not exceed forty-five dollars  
33 (\$45).

34 (c) (1) Exclude from an advertisement of a vehicle for sale  
35 that there will be added to the advertised total price at the time of  
36 sale, charges for sales tax, vehicle registration fees, the California  
37 tire fee, the fee charged by the state for the issuance of any  
38 certificate of compliance or noncompliance pursuant to any  
39 statute, finance charges, and any dealer document preparation  
40 charge.

(2) The obligations imposed by paragraph (1) shall be satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: “Plus government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge.”

(3) For purposes of paragraph (1), “advertisement” means any advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on any Web page of a dealer’s Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars (\$45) for the document preparation charge and not to exceed fifty dollars (\$50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

1 (B) A recreational vehicle as defined in Section 18010 of the  
2 Health and Safety Code.

3 (C) A commercial coach, as defined in Section 18001.8 of the  
4 Health and Safety Code.

5 (D) An off-highway motor vehicle subject to identification as  
6 defined in Section 38012.

7 (E) A manufactured home.

8 (F) A new vehicle that will be substantially altered or modified  
9 by a converter prior to resale.

10 (G) A commercial vehicle with a gross vehicle weight rating  
11 of more than 10,000 pounds.

12 (H) A vehicle purchased for export and exported outside the  
13 territorial limits of the United States without being registered  
14 with the department.

15 (g) Sell a park trailer, as specified in Section 18009.3 of the  
16 Health and Safety Code, without disclosing in writing to the  
17 purchaser that a park trailer is required to be moved by a  
18 transporter or a licensed manufacturer or dealer under a permit  
19 issued by the Department of Transportation or a local authority  
20 with respect to highways under their respective jurisdictions.

21 (h) Advertise free merchandise, gifts, or services provided by  
22 a dealer contingent on the purchase of a vehicle. The term “free”  
23 includes merchandise or services offered for sale at a price less  
24 than the seller’s cost of the merchandise or services.

25 (i) Advertise vehicles, and related goods or services, at a  
26 specified dealer price, with the intent not to supply reasonably  
27 expectable demand, unless the advertisement discloses the  
28 number of vehicles in stock at the advertised price. In addition,  
29 whether or not there are sufficient vehicles in stock to supply a  
30 reasonably expectable demand, when phrases such as “starting  
31 at,” “from,” “beginning as low as,” or words of similar import  
32 are used in reference to an advertised price, the advertisement  
33 shall disclose the number of vehicles available at that advertised  
34 price.

35 For purposes of this subdivision, in any newspaper  
36 advertisement for a vehicle that is two model-years old or newer,  
37 the actual phrase that states the number of vehicles in stock at the  
38 advertised price shall be (1) printed in a type size that is at least  
39 equal to one-quarter of the type size, and in the same style and  
40 color of type, used for the advertised price, however, in no case

1 shall the phrase be printed in less than 8-point type size, and (2)  
2 be disclosed immediately above, below, or beside the advertised  
3 price without any intervening words, pictures, marks, or symbols.

4 The disclosure required by this subdivision is in addition to any  
5 other disclosure required by this code or any regulation regarding  
6 identifying vehicles advertised for sale.

7 (j) Use the term “rebate” or similar words such as “cash back”  
8 in advertising the sale of a vehicle unless the rebate is expressed  
9 in a specific dollar amount and is in fact a rebate offered by the  
10 vehicle manufacturer or distributor directly to the retail purchaser  
11 of the vehicle or to the assignee of the retail purchaser.

12 (k) Require a person to pay a higher price for a vehicle and  
13 related goods or services for receiving advertised credit terms  
14 than the cash price the same person would have to pay to  
15 purchase the same vehicle and related goods or services. For the  
16 purpose of this subdivision, “cash price” has the meaning as  
17 defined in subdivision (e) of Section 2981 of the Civil Code.

18 (l) Advertise a guaranteed trade-in allowance.

19 (m) Misrepresent the authority of a salesperson,  
20 representative, or agent to negotiate the final terms of a  
21 transaction.

22 (n) (1) Use the terms “invoice,” “dealer’s invoice,”  
23 “wholesale price,” or similar terms that refer to a dealer’s cost for  
24 a vehicle in an advertisement for the sale of a vehicle or advertise  
25 that the selling price of a vehicle is above, below, or at either of  
26 the following:

27 (A) The manufacturer’s or distributor’s invoice price to a  
28 dealer.

29 (B) A dealer’s cost.

30 (2) This subdivision does not apply to either of the following:

31 (A) Any communication occurring during face-to-face  
32 negotiations for the purchase of a specific vehicle if the  
33 prospective purchaser initiates a discussion of the vehicle’s  
34 invoice price or the dealer’s cost for that vehicle.

35 (B) Any communication between a dealer and a prospective  
36 commercial purchaser that is not disseminated to the general  
37 public. For purposes of this subparagraph, a “commercial  
38 purchaser” means a dealer, lessor, lessor-retailer, manufacturer,  
39 remanufacturer, distributor, financial institution, governmental

1 entity, or person who purchases 10 or more vehicles during a  
2 year.

3 (o) Violate any law prohibiting bait and switch advertising,  
4 including, but not limited to, the guides against bait advertising  
5 set forth in Part 238 (commencing with Section 238) of Title 16  
6 of the Code of Federal Regulations, as those regulations read on  
7 January 1, 1988.

8 (p) Make any untrue or misleading statement indicating that a  
9 vehicle is equipped with all the factory installed optional  
10 equipment the manufacturer offers, including, but not limited to,  
11 a false statement that a vehicle is “fully factory equipped.”

12 (q) Affix on any new vehicle a supplemental price sticker  
13 containing a price that represents the dealer’s asking price which  
14 exceeds the manufacturer’s suggested retail price unless all of the  
15 following occur:

16 (1) The supplemental sticker clearly and conspicuously  
17 discloses in the largest print appearing on the sticker, other than  
18 the print size used for the dealer’s name, that the supplemental  
19 sticker price is the dealer’s asking price, or words of similar  
20 import, and that it is not the manufacturer’s suggested retail  
21 price.

22 (2) The supplemental sticker clearly and conspicuously  
23 discloses the manufacturer’s suggested retail price.

24 (3) The supplemental sticker lists each item which is not  
25 included in the manufacturer’s suggested retail price, and  
26 discloses the additional price of each item. If the supplemental  
27 sticker price is greater than the sum of the manufacturer’s  
28 suggested retail price and the price of the items added by the  
29 dealer, then the supplemental sticker price shall set forth that  
30 difference and describe it as “added mark-up.”

31 (r) Advertise any underselling claim, such as “we have the  
32 lowest prices” or “we will beat any dealer’s price,” unless the  
33 dealer has conducted a recent survey showing that the dealer sells  
34 its vehicles at lower prices than any other licensee in its trade  
35 area and maintains records to adequately substantiate the claims.  
36 The substantiating records shall be made available to the  
37 department upon request.

38 (s) Advertise any incentive offered by the manufacturer or  
39 distributor if the dealer is required to contribute to the cost of the  
40 incentive as a condition of participating in the incentive program,

1 unless the dealer discloses in a clear and conspicuous manner  
2 that dealer participation may affect consumer cost.

3 For purposes of this subdivision, “incentive” means anything  
4 of value offered to induce people to purchase a vehicle,  
5 including, but not limited to, discounts, savings claims, rebates,  
6 below-market finance rates, and free merchandise or services.

7 (t) Display or offer for sale any used vehicle unless there is  
8 affixed to the vehicle the Federal Trade Commission’s Buyer’s  
9 Guide as required by Part 455 of Title 16 of the Code of Federal  
10 Regulations.

11 (u) Fail to disclose in writing to the franchisor of a new motor  
12 vehicle dealer the name of the purchaser, date of sale, and the  
13 vehicle identification number of each new motor vehicle sold of  
14 the line-make of that franchisor, or intentionally submit to that  
15 franchisor a false name for the purchaser or false date for the date  
16 of sale.

17 (v) Enter into a contract for the retail sale of a motor vehicle  
18 unless the contract clearly and conspicuously discloses whether  
19 the vehicle is being sold as a new vehicle or a used vehicle, as  
20 defined in this code.

21 (w) Use a simulated check, as defined in subdivision (a) of  
22 Section 22433 of the Business and Professions Code, in an  
23 advertisement for the sale or lease of a vehicle.

24 (x) Fail to disclose, in a clear and conspicuous manner in at  
25 least 10-point bold type on the face of any contract for the retail  
26 sale of a new motor vehicle that this transaction is, or is not,  
27 subject to a fee received by an autobroker from the selling new  
28 motor vehicle dealer, and the name of the autobroker, if  
29 applicable.

30 (y) As used in this section, the terms “make” and “model”  
31 have the same meaning as is provided in Section 565.3 of Title  
32 49 of the Code of Federal Regulations.

33 (z) *Advertise for sale or sell a used vehicle as “certified” or*  
34 *use any similar descriptive term in the advertisement or the sale*  
35 *of a used vehicle that implies the vehicle has been certified to*  
36 *meet the terms of a used vehicle certification program unless:*

37 (1) *The odometer on the vehicle indicates actual mileage, and*  
38 *has not been rolled back or otherwise altered to show fewer*  
39 *miles, or replaced with an odometer showing fewer miles than*  
40 *actually driven.*

1     (2) *The dealer has no actual knowledge that the vehicle has*  
2 *been repurchased by a dealer or manufacturer pursuant to a*  
3 *state or federal warranty statute.*

4     (3) *The title to the vehicle has not been inscribed with the*  
5 *notation “Lemon Law Buyback,” “manufacturer repurchase,”*  
6 *“salvage,” “junk,” “nonrepairable,” “flood,” or similar*  
7 *designation or title designation required by this state or another*  
8 *state.*

9     (4) *The vehicle has been inspected by a technician or*  
10 *technicians qualified to inspect for collision repair and*  
11 *mechanical condition.*

12     (5) *Prior to sale, the dealer provides the buyer with a*  
13 *completed inspection report indicating all the components*  
14 *inspected pursuant to the vehicle certification program and*  
15 *whether they meet the standards of the vehicle certification*  
16 *program.*

17     (6) *The dealer does not disclaim any warranties of*  
18 *merchantability on the vehicle.*

19     (7) *The vehicle is not sold “AS IS.”*

20     (aa) (1) *Nothing in subdivision (z) shall be construed to*  
21 *require that a seller offer a “certified” vehicle program.*

22     (2) *All requirements in subdivision (z) are minimum*  
23 *requirements, and do not preclude a seller from offering a*  
24 *“certification” program that is more protective of the buyer.*

25     SEC. 4. Section 11713.16 is added to the Vehicle Code, to  
26 read:

27     11713.16. It is unlawful and a violation of this code for the  
28 holder of any dealer's license issued under this article to do any  
29 of the following:

30     (a) Negotiate the terms of a vehicle sale or lease contract and  
31 then add charges to the contract for any goods or services without  
32 previously disclosing to the consumer the goods and services to  
33 be added and obtaining the consumer's consent.

34     (b) (1) Inflate the amount of an installment payment or down  
35 payment or extend the maturity of a sale or lease contract for the  
36 purpose of disguising the actual charges for goods or services to  
37 be added by the dealer to the contract.

38     (2) For purposes of paragraph (1), “goods or services” means  
39 any type of good or service, including, but not limited to,  
40 insurance and service contracts.

1 SEC. 5. Chapter 11 (commencing with Section 12200) is  
2 added to Division 5 of the Vehicle Code, to read:

3  
4 CHAPTER 11. CAR BUYER'S RESTITUTION FUND  
5

6 12200. The following definitions apply to this chapter:

7 (a) "Application" is an application to the department for the  
8 payment of an eligible claim from the fund.

9 (b) "Consumer" is a person who engaged in either of the  
10 following:

11 (1) Purchased or leased, or become obligated to purchase or  
12 lease, a motor vehicle that is used, or is to be used, primarily for  
13 personal, family, or household purposes from a dealer or  
14 lessor-retail licensed under this code.

15 (2) Consigned for sale a motor vehicle that is used primarily  
16 for personal, family, or household purposes to a dealer licensed  
17 under this division.

18 (c) "Eligible claim" is an unsatisfied claim for economic loss  
19 that accrues after July 1, 2006, as a result of the failure of a  
20 dealer licensed under this division, or if applicable, a  
21 lessor-retailer licensed under this division, to do any of the  
22 following:

23 (1) Remit license or registration fees received from a  
24 consumer to the department.

25 (2) Pay to the lessor registered in accordance with Section  
26 4453.5, or the legal owner reflected on the ownership certificate  
27 of a motor vehicle transferred by a consumer to the dealer, the  
28 amount necessary to discharge the prior credit or lease balance  
29 owed to the lessor or legal owner.

30 (3) Pay the amount specified in a consignment agreement to a  
31 consumer after the sale of a consigned motor vehicle; or, in the  
32 absence of a written consignment agreement, pay the sale amount  
33 as established by other evidence.

34 (d) "Fund" is the Car Buyer's Restitution Fund.

35 12201. (a) The Car Buyer's Restitution Fund is hereby  
36 established in the State Treasury.

37 (b) The fees collected pursuant to Section 4456.3, and the  
38 interest earned on those fees, shall be deposited in the fund. The  
39 fees and any accrued interest or earnings shall be invested in the  
40 Special Deposit Fund pursuant to Section 16370 of the

1 Government Code or any other appropriate interest bearing or  
2 revenue earning trust account approved by the director.

3 (c) Notwithstanding Section 13340 of the Government Code,  
4 the money in the fund is hereby continuously appropriated,  
5 without regard to fiscal years, to the department to compensate or  
6 reimburse consumers as prescribed in this chapter. Moneys from  
7 the fund for the administration of this chapter by the department  
8 shall be available to the department, upon appropriation, by the  
9 Legislature.

10 12202. (a) A consumer may file an application with the  
11 department for the payment of a consumer's eligible claim if a  
12 dealer or lessor-retailer against whom the claim is asserted has  
13 ceased selling and leasing motor vehicles to the general public or  
14 has become subject to a petition in bankruptcy.

15 (b) The application shall be verified and shall set forth the  
16 consumer's name, address, and telephone number and the amount  
17 and description of the eligible claim, and what action, if any, the  
18 applicant has taken to recover the amount of the eligible claim.

19 (c) The application shall be accompanied by a copy of the  
20 agreement, if any, between the consumer and the dealer or  
21 lessor-retailer, unless the agreement is unnecessary to the  
22 departments determination of the validity of the claim.

23 (d) If the eligible claim is based on the failure to remit license  
24 or registration fees, the application shall be accompanied by  
25 evidence demonstrating that the consumer paid money or other  
26 consideration for the fees or became obligated to pay those fees.  
27 The eligible claim shall be limited to the dollar amount of the  
28 license or registration fees not remitted and any late charge or  
29 penalty.

30 (e) (1) If the eligible claim is based on the failure to pay the  
31 proceeds of a consignment sale, the application shall be  
32 accompanied by all of the following:

33 (A) The consignment agreement or, in the absence of a written  
34 agreement, other evidence establishing a consignment.

35 (B) Evidence that the consigned motor vehicle was sold.

36 (C) The consumer's verified statement, under penalty of  
37 perjury, that the consumer did not receive the portion of the  
38 proceeds of the sale to which the consumer was entitled.

39 (2) Subject to the limitations contained in Section 12205, the  
40 eligible claim is limited to the dollar amount specified in a

1 written consignment agreement to be paid to the consignor or, in  
2 the absence of a written consignment agreement, other evidence  
3 establishing the sale amount.

4 (f) If the eligible claim is based on the failure to pay the lessor  
5 or legal owner of the motor vehicle taken in trade or purchased  
6 from the consumer, the application shall be accompanied by a  
7 statement from the lessor or legal owner of the amount, if any,  
8 that he or she received from the dealer. Subject to the limitations  
9 contained in Section 12205, the eligible claim is limited to the  
10 dollar amount necessary to discharge the credit or lease balance  
11 owing on the trade-in or purchased vehicle.

12 (g) The department may require reasonable additional  
13 information designed to facilitate payment of eligible claims.

14 (h) The application shall be filed within one year of the date  
15 upon which the dealer or lessor-retailer ceased selling or leasing  
16 motor vehicles to the general public or became subject to a  
17 petition in bankruptcy.

18 12203. The department shall develop a notice fully explaining  
19 a consumer's right to make a claim from the fund, an application  
20 form, and an explanation of how to complete the application.

21 12204. (a) Within 30 days of receiving an application, the  
22 department shall notify the applicant, in writing, that the  
23 application is complete or, if the application is incomplete, what  
24 additional information is required.

25 (b) (1) Within 60 days of the department's receipt of a  
26 complete application, the department shall either pay the eligible  
27 claim from the fund as prescribed in this chapter or deny the  
28 claim.

29 (2) The department, for good cause, may extend the 60-day  
30 period to not more than an additional 90 days to investigate the  
31 accuracy of the application or evidence submitted by a dealer or  
32 lessor-retailer.

33 12205. If the department pays the claim, the amount of the  
34 payment shall be the total of the amount of the eligible claim, but  
35 in no event shall the payment exceed ten thousand dollars  
36 (\$10,000) for a transaction.

37 12206. If the department denies the claim, the department  
38 shall notify the applicant of the denial, the factual and legal bases  
39 for the denial, and the applicant's right to appeal the denial, in  
40 writing, to the director within 60 days of receipt of the notice or

1 any longer period permitted by the department. If an appeal is not  
2 requested within that 60 days or any additional period reasonably  
3 requested by the consumer and granted by the department, the  
4 department's decision shall be final. If an appeal is requested, the  
5 appeal shall be conducted pursuant to the procedure established  
6 by regulation adopted by the department.

7 12207. If the department pays an eligible claim, all of the  
8 following apply:

9 (a) Immediately upon payment, the department shall be  
10 subrogated to all of the consumer's rights against the dealer or  
11 lessor-retailer to the extent of the amount of the payment. The  
12 department shall seek to recover the claim amount from the  
13 dealer's bond required by Section 11710.

14 (b) The department may bring an action to recover the amount  
15 of the payment and shall be entitled to recover costs and  
16 reasonable attorney's fees.

17 12208. A person who, with the intent to prejudice, damage, or  
18 defraud the fund, files with the department a false application,  
19 statement, or other document under this chapter, is guilty of a  
20 misdemeanor punishable by confinement in the county jail for  
21 not more than one year.

22 12209. The department may adopt regulations to implement  
23 this chapter in accordance with Chapter 3.5 (commencing with  
24 Section 11340) of Part I of Division 3 of Title 2 of the  
25 Government Code and shall adopt regulations to establish the  
26 appeal procedure described in Section 12206 by July 1, 2006.  
27 Any interim emergency regulations adopted to implement this  
28 chapter shall be considered by the Office of Administrative Law  
29 as necessary for the immediate preservation of the public peace,  
30 health, and safety and of the general welfare.

31 SEC. 6. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district will be incurred because this act creates a new crime or  
35 infraction, eliminates a crime or infraction, or changes the  
36 penalty for a crime or infraction, within the meaning of Section  
37 17556 of the Government Code, or changes the definition of a  
38 crime within the meaning of Section 6 of Article XIII B of the  
39 California Constitution.

O